IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

CRL.A.No. 549 of 2007(C)

SC.848/2002 of ADDITIONAL DISTRICT & SESSIONS COURT (ADHOC)-II, KOLLAM

CP.28/2001 of JUDL.MAGISTRATE OF FIRST CLASS, PARAVOOR

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APPELLANT:

JALAJAN
C.NO. 1228
CENTRAL PRISON
TRIVANDRUM

BY ADV. BANI P [STATE BRIEF]

RESPONDENTS:

STATE OF KERALA
REPRESENTED BY THE
PUBLIC PROSECUTOR

BY ADV. PUBLIC PROSECUTOR SRI. PUZHAKKARA MUHAMMED

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 05/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. THANKAPPAN, J.

CRL.A.NO.549 OF 2007-C

Dated this the 5th day of July, 2007.

JUDGMENT

The appellant/accused in S.C.No.848/2002 on the file of the Additional District and Sessions Judge (Adhoc-II), Kollam faced trial for an offence punishable under Section 55(a) of the Abkari Act. The prosecution case against the appellant was that on 12.8.1998 at about 2.50 p.m the appellant was found in possession of 10 liters of arrack at a puramboke land on the banks of Ithikkara river without having any permit or license. To prove the charge against the appellant, prosecution examined Pws 1 to 5 and produced Exts.P1 to P5. MO1 was also produced. After closing the prosecution evidence, the appellant was questioned under Section 313 of the Code of Criminal Procedure. Denying the prosecution charge, the appellant had stated that he is innocent of the charge and he was arrested from the banks of Ithikkara river on the date of the incident and as the persons who were responsible for keeping the illicit arrack left the place, the excise officials made him as a person in possession of the contraband article- MO1. However, after considering the evidence adduced by the prosecution, both oral and documentary, the

trial court found the appellant guilty under Section 8(1) read with Section 8(2) of the Abkari Act and he was sentenced to undergo R.I for two years and a fine of Rs.Two lakhs with default sentence of fine to a further period of S.I for one year. The judgment of the trial court is challenged in this appeal. Since the appeal is filed through the jail authorities and the appellant had no counsel of his own choice, a member from the State brief panel has been appointed to defend the appellant in the appeal.

2. This Court heard the learned counsel appearing for the appellant as well as the Public Prosecutor and also perused the records made available to this Court. The counsel appearing for the appellant contended as follows:

Firstly, the learned counsel submits that since the prosecution rests its case only on the evidence of excise officials, the trial court committed serious error in placing reliance on the official witnesses as the independent witnesses cited are not supporting the prosecution case. Secondly it is submitted that evidence of PW1 - the Excise Inspector and PW2 - the Preventive Officer are contradictory in nature with regard to the detection of the crime and even arrest of the appellant. Thirdly it is submitted that as the independent

witnesses, who cited to prove detection of the crime, turned hostile to the prosecution non examination of the main independent witness, Sahajan cited in Ext.P1, is fatal to the evidence adduced by Pws 1 and 2 with regard to the detection of the crime. Lastly it is submitted that the sentence imposed against the appellant is excessive.

3. In the light of the contentions raised by the learned counsel, it is to be decided whether the judgment of the trial court is sustainable or not. The prosecution case is that on getting information that the appellant and one Santhosh were dealing with wash and arrack at the banks of Ithikkara river, PW1- the Excise Inspector, PW2- the Preventive Officer and other officials went towards the place of occurrence and PW1 had noted that the appellant was approaching the excise party holding MO1 can in his hand and when the appellant saw the excise officials, he tried to escape from the scene. However, he was stopped and questioned and it was found that the MO1 can contained a white liquid and on further examination it was found that MO1 can contained arrack measuring about 10 liters and on further questioning the appellant , he had stated that the contraband article was brought for selling the same

in a nearby place. PW1 had prepared Ext.P1 mahazar in the presence of Pws 3 and 4 and other independent witnesses and seized MO1 can from the appellant. Thereafter PW1 had taken 280 ml of arrack for analysing the same and the appellant was arrested on the next day itself namely on 13.8.1998 the appellant, the contraband article and the sample were produced before the court as per Ext.P3 property list. Thereafter, the sample was got analysed and it was reported as per Ext.P4 chemical report that the sample analysed was arrack. The evidence of PW1 has been corroborated with the evidence of PW2. PW2 also had supported the evidence of PW1 with regard to the detection of the crime, seizure of MO1 and taking of the sample. PW2 had also stated that PW1 had seized MO1, taken the sample and labeled the same as per the Rules in the presence of the independent witnesses. As per Ext.P1 mahazar, MO1 was seized, labeled and produced before the court. The evidence of Pw5 would show that the sample got analysed was arrack. In the light of the above evidence, the trial court fully believed the evidence of Pws 1 and 2 though Pws 3 and 4, who were cited as independent witnesses, turned hostile to the prosecution. However, they have admitted their signatures in Ext.P1 though they have stated in it that the signatures were put only after

some time and on a white paper. In the light of the case set up by the appellant under Section 313 and on the trend of the cross examination of Pws 1 and 2 it is not possible to hold that the evidence of Pws 1 and 2 cannot be accepted. In the above circumstances, as the prosecution has adduced cogent evidence against the appellant, this Court is of the view that the finding of the trial court that the appellant was found in possession of MO1 and had committed an offence punishable under Section 8(1) read with Section 8 (2) of the Abkari Act requires no interference and there is no ground to hold that PW1 had violated any of the provisions of the Abkari Act or even the Kerala Excise Manuel. Even though it is suggested to PW1 that there was no label on MO1 can, it was admitted by him that he labeled the same when it was seized from the appellant. That apart, it is seen that there was remanence of the seal of PW1when MO1 was produced before the court. There is evidence to show that MO1 and the sample were produced before the court on the very next day.

4. In the above circumstances, there is no room for any doubt regarding the evidence of Pws 1 and 2. There is no hard and fast rule for rejecting the prosecution case as it rests on the evidence

of official witnesses. In the case in hand, the prosecution had succeeded in proving the case beyond reasonable doubt. The next question to be considered is whether the appellant is entitled for any leniency in the matter of sentence. The trial court had imposed R.I for two years and a fine of Rs.Two lakhs. It has come out in evidence that the petitioner had not committed any previous offence. In the above circumstances, this Court is of the view that the rigorous imprisonment ordered against the appellant shall be reduced to one year from two years and also the fine of two lakhs to one lakh and in default of payment of the fine, the simple imprisonment shall be reduced to three months from one year. The petitioner is also entitled for the benefit under Section 428 of the Cr.P.C.

With the above modifications in the sentence, in all other respects the appeal stands dismissed.

K. THANKAPPAN, JUDGE.

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K. THANKAPPAN, J.

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JUDGMENT

5th July, 2007.